UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA, et al.,
Plaintiffs

vs

BOARD OF HAMILTON COUNTY COMMISSIONERS, et al.,
Defendants

Case No. 1:02-cv-107
Spiegel, J.
Litkovitz, M.J.

ORDER RE: REQUEST FOR REVIEW BY WILBUR LEE SANFORD

This matter is before the Court on the Request for Review of the denial of a Sewer Back Up ("SBU") claim by Wilbur Lee Sanford. (Doc. 526). Mr. Sanford seeks compensatory damages from the Metropolitan Sewer District of Greater Cincinnati ("MSD") for water backup into his basement.

Mr. Sanford's request for review is filed under the Sewer Back Up[1] program (formerly known as the Water-in-Basement [WIB] Claims Process Plan) (Doc. 131, Consent Decree, Exhibit 8). The Plan states in relevant part:

> Subject to the requirements of this Plan, occupants who incur damages as a result of the backup of wastewater into buildings due to inadequate capacity in MSD's Sewer System (both the combined and the sanitary portions) can recover those damages. This plan also provides a means for occupants to recover damages arising from backups that are the result of MSD's negligent maintenance, destruction, operation or upkeep of the Sewer System. The Claims Process is not intended to address water in buildings caused by overland flooding not emanating from MSD's Sewer Systems or caused by blockages in occupants' own lateral sewer lines.

(Doc. 131, Consent Decree, Exhibit 8 at 1). In determining the cause of SBU, MSD must

[1]The "Water-In-Basement" program has been renamed the "Sewer Back Up" program to more accurately reflect MSD's responsibility for sewage backups caused by inadequate capacity in MSD's sewer system. *See* Doc. 452 at 4; Doc. 454 at 16.

exercise its good faith reasonable engineering judgment and consider the following non-exclusive factors: amount of precipitation, property SBU history, condition of the sewer system in the neighborhood, results of a visual inspection of the neighborhood to look for signs of overland flooding, neighborhood SBU history, capacity of nearby public sewer lines, and topography. (Doc. 131, Consent Decree, Exhibit 8 at 2). Damages arising from basement backups for which MSD is responsible are limited to documented real and personal property. *Id.*

Mr. Sanford is the owner of the property located at 6748 Stoll Lane, Cincinnati, Ohio. On June 14, 2010, Mr. Sanford contacted MSD about water coming up from the drain in his garage and flowing into his adjacent basement family room. Mr. Sanford states that when it rains, he has repeated backups from the drain in the garage which then flows into the basement family room. Mr. Sanford states that he has had up to seven inches of rain backup into his family room and that this has been a problem for many years. He tried to correct the problem by having a private plumbing company install a sump pump at the cost of $1,000.00. However, this did not solve the problem. He states that the private plumber could not identify the problem. As relief, he requests $1,000.00 for the cost of a backup pump to use in case of a power failure, which would render his main electrical sump pump inoperable. Mr. Sanford also requests that MSD provide the services of a professional plumber at no charge to him.

MSD presents evidence that when MSD investigated Mr. Sanford's complaint on June 14, 2010, there was no main sewer problem. (Doc. 541, Complaint Form dated 6/14/10). Terry Fox, an MSD representative, investigated the main sewer line and found no signs of sewer discharge which would indicate a backup of wastewater into the basement due to inadequate capacity in MSD's Sewer System. In addition, MSD states that there were no other complaints of backups in the vicinity of Stoll Lane at the time of the reported backup by Mr. Sanford. MSD also presented evidence that the houses across the street from Mr. Sanford's house have basements with lower elevations. If the main sewer line discharged, the backup of sewage would necessarily affect houses having basements at lower elevations than Mr. Sanford's basement. However, there were no reports of other houses on Stoll Lane having backups. MSD states that the garage at 6748 Stoll Lane may flood because there is a below-grade driveway (Doc. 541, attached photo). Finally, MSD states that while a private plumber investigated Mr. Sanford's problem, there is no documentation of any diagnostic determination.

Under the SBU program governed by the Consent Decree, homeowners who seek review of the denial of an SBU claim bear the burden of proof of showing that the backup of wastewater into their property was due to inadequate capacity in MSD's sewer system. Here, Mr. Sanford has not shown that any water backup into his basement was caused by inadequate capacity in MSD's sewer system. MSD has presented evidence that the contemporaneous investigation of Mr. Sanford's claim disclosed no signs of sewer discharge from the main sewer line. In addition, MSD received no other complaints of sewer backups in houses on Stoll Lane at the time of the reported backup, particularly those with basement elevations lower than Mr. Sanford's basement. Therefore, it appears that any flooding of Mr. Sanford's basement was not the result of a capacity-related problem with the main sewer line, but rather was caused by a private, yet undiagnosed plumbing problem for which the homeowner is responsible. There is simply insufficient evidence to show that the cause of the flooding to Mr. Sanford's basement resulted from inadequate capacity in MSD's Sewer System.

Therefore, the Court denies Mr. Sanford's claim in this case.

IT IS SO ORDERED.

Date: 3/2/2012

Karen L. Litkovitz

Karen L. Litkovitz, Magistrate Judge
United States District Court